IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No.

W. H. ELLIOTT & SONS CO., INC.,
Plaintiff, Appellant

v.

NUODEX PRODUCTS CO., INC.,
Defendant, Appellee

No.

E. & F. KING & CO., INCORPORATED
Cross-defendant, Appellant

v.

NUODEX PRODUCTS CO., INC.,
Cross-defendant, Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEW HAMPSHIRE

CONSOLIDATED RECORD APPENDIX SUBMITTED JOINTLY BY PLAINTIFF-APPELLANT AND CROSS-CLAIMANT APPELLANT

Submitted jointly by

McLane, Carleton, Graf, Greene & Brown
and, Stanley M. Brown
Attorneys for Plaintiff

and

Upton, Sanders & Upton
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Attorneys for Cross-Claimant Appellant

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FOR THE FIRST CIRCUIT

No.

W. H. Elliott & Sons Co., Inc. v. Nuodex Products Co., Inc.

No.

E. & F. King & Co., Incorporated v. Nuodex Products Co., Inc.

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CONSOLIDATED RECORD APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

W. H. ELLIOTT & SONS CO., INC.
Plaintiff
v.
E. & F. KING & CO., INCORPORATED
and
NUODEX PRODUCTS CO., INC.
Defendants

Civil Action No. 1465

ADDITIONAL DOCKET ENTRIES

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Apr. 25 Plaintiff's Notice of Appeal from order of April 18, 1956.

Apr. 26 Motion of defendant E. & F. King & Co. Inc. to amend and supplement findings of fact.

May 2 Answer of defendant Nuodex Products Co. Inc. to motion of defendant King Company to amend and supplement findings of fact.

May 22 Hearing is had on motion of defendant, E. & F. King & Co. Inc. to amend and supplement findings of fact. Taken under advisement. Connor, J.

May 31 Above motion denied. Connor, J.
Record certified to Circuit Court of Appeals.

June 22 Notice of Appeal of defendant, E. & F. King & Co., Inc.
Statement of Points to be Relied upon by the appellant, E. & F. King & Co., Inc.
Statement of Parts of Record Appellant Proposes to Print in the Appendix of its Brief Pursuant to Rule 24 of the Court of Appeals.

June 29 Additional documents certified to Court of Appeals.

Aug. 13 Reporter's transcript of Excerpts from hearing on motions, February 28, 1955.

Aug. 15 Reporter's transcript of Excerpts from hearing on motions.

Aug. 24 Reporter's transcript of hearing on defendant Nuodex

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motion that deposition of Charles J. Gotthardt be not closed.

Oct. 11 Submission to the Court of Motion of Nuodex Products Co., Inc. to Dismiss the Cross Claim of E. & F. King & Co., Inc.

Plaintiff's motion for issuance of certificate pursuant to Rule 54(b).

Motion of E. & F. King & Co., Inc. for issuance of certificate pursuant to Rule 54(b).

Oct. 22 Hearing is had on plaintiff's motion for the issuance of certificate pursuant to Rule 54(b). Formal submission of defendant E. & F. King & Co., Inc. for determination by the Court of the issues raised by the motion of Nuodex Products Co., Inc. to dismiss the cross claim of King on ground of lack of jurisdiction and on motion of E. & F. King & Co. for issuance of a certificate pursuant to Rule 54(b). Taken under advisement. Connor, J.

Oct. 25 Order, Connor, J., in accordance with motions of plaintiff and defendant King, under Rule 54(b), determining that after entry of judgment on order of this court of April 18, 1956, there was not just cause for delay in seeking a review of issues raised by that order, and expressly directing that judgment be entered on that order, to permit plaintiff to perfect such appeal without delay.

Order, Connor, J., on motion of defendant Nuodex Products Co. Inc. to dismiss cross-claim of E. & F. King & Co. Inc., granted on issue of jurisdiction raised by ground (1) of said motion. Conformably to an agreement by the parties, the issue raised by ground (2) was deferred for later hearing, and this order is made without consideration of its merits.

Oct. 27 Plaintiff's Notice of Appeal.

Oct. 31 Motion of E. & F. King & Co. Inc. for issuance of certificate pursuant to Rule 54(b) of the Rules of Civil Procedure.

Oct. 31 Order, Connor, J., in accordance with motion of defendant E. & F. King & Co. Inc. under Rule 54(b).

Nov. 1 Notice of Appeal of defendant E. & F. King & Co. Inc.

SUBMISSION TO THE COURT OF MOTION OF NUODEX PRODUCTS CO., INC. TO DISMISS THE CROSS CLAIM OF E. & F. KING & CO., INCORPORATED

(Caption & Signature Omitted)

Now comes E. & F. King & Co., Incorporated and respectfully represents:

1. On October 20, 1955 E. & F. King & Co., Incorporated filed its cross claim against the defendant Nuodex Products Co., Inc. and in response thereto on October 21, 1955 Nuodex Products Co., Inc. filed its motion to dismiss said cross claim on the grounds:

> "(1) Nuodex Products Co., Inc. is not now, and never has been, subject to the jurisdiction of this Court in the proceedings in which said 'Cross-Claim' was filed.
>
> "(2) Said 'Cross-Claim' fails to state a cause upon which relief can be granted."

2. At the hearing on the motion of Nuodex Products Co., Inc. to dismiss the complaint of W. H. Elliott & Sons Co., Inc. on the ground that "Nuodex Products Co., Inc. is not now, and never has been, subject to the jurisdiction of this Court" it was agreed by the parties that all evidence introduced during said hearing should be deemed evidence in the later determination by the Court of the motion of Nuodex Products Co., Inc. to dismiss, on the same ground, the cross claim of E. & F. King & Co., Incorporated, but there nevertheless was expressly reserved by E. & F. King & Co., Incorporated the right to introduce such further or additional evidence as it might deem advisable in support of jurisdiction over Nuodex Products Co., Inc.

3. E. & F. King & Co., Incorporated was permitted to participate fully in said hearing and has no further evidence to offer on said motion to dismiss on said ground its cross claim against Nuodex Products Co., Inc.

WHEREFORE E. & F. King & Co., Incorporated hereby submits, on the evidence heretofore introduced, for the determination of the Court the issues raised by the motion of Nuodex Products Co., Inc. to dismiss its cross claim on the ground that it "is not

now, and never has been, subject to the jurisdiction of this Court in the proceeding in which said 'Cross-Claim' was filed".

MOTION FOR ISSUANCE OF CERTIFICATE PURSUANT TO THE PROVISIONS OF RULE 54(b) OF THE CIVIL RULES OF PROCEDURE.

(Caption Omitted)

Now comes E. & F. King & Co., Incorporated and moves, pursuant to the provisions of Rule 54(b) of the Rules of Civil Procedure, that the Court issue a certificate that there is no just reason for delay in seeking an appellate review of its Opinion and Order of April 18, 1956, granting the motion of Nuodex Products Co., Inc. to dismiss the complaint on the ground of lack of jurisdiction of the Court over Nuodex Products Co., Inc. and that the Court expressly direct that judgment be entered on that order, to permit the said defendant E. & F. King & Co., Incorporated to perfect said appeal without delay.

E. & F. King & Co., Incorporated

MOTION

(Caption Omitted)

Plaintiff moves, under Rule 54(b), that the Court issue a certificate that there is no just reason for delay in seeking a review of its Opinion and Order of April 18, 1956, granting Defendant Nuodex' Motion to Dismiss the complaint on the ground of lack of jurisdiction of the Court over this defendant; and that the Court expressly direct that judgment be entered on that order, to permit Plaintiff to perfect such appeal without delay.

Respectfully submitted,

W. H. Elliott & Sons Co., Inc.

ORDER

(October 25, 1956)

(Caption Omitted)

In accordance with the motions of the plaintiff, W. H. Elliott & Sons Co., Inc., and of the defendant E. & F. King & Co., Incorporated, under Rule 54(b), I determine that after entry of judgment on the order of this court of April 18, 1956, there was

no just cause for delay in seeking a review of the issues raised by that order, and I expressly direct that judgment be entered on that order, to permit plaintiff to perfect such appeal without delay.

ALOYSIUS J. CONNOR
United States District Judge

ORDER
(October 25, 1956)
(CAPTION OMITTED)

The motion of the defendant Nuodex Products Co., Inc. to dismiss the cross-claim of E. & F. King & Co., Incorporated is granted on the issue of jurisdiction raised by ground (1) of said motion. Conformably to an agreement by the parties, the issue raised by ground (2) was deferred for later hearing, and this order is made without consideration of its merits.

ALOYSIUS J. CONNOR
United States District Judge.

NOTICE OF APPEAL

Notice is hereby given that W. H. Elliott & Sons, Inc., Plaintiff above named, hereby appeals to the United States Court of Appeals for the First Circuit from the order of the District Court of April 18, 1956, granting Defendant Nuodex' Motion to Dismiss the Complaint on the ground of lack of jurisdiction over this defendant on which final judgment has been entered under Rule 54(b). The points on appeal, the Record to be printed, and the Briefs to be filed on appeal are those already filed in Court of Appeals Docket No. 5125.

MOTION FOR ISSUANCE OF CERTIFICATE
Pursuant to Rule 54 (b) of the Rules of Civil Procedure

Now comes E. & F. King & Co., Incorporated, and moves, pursuant to Rule 54 (b) of the Rules of Civil Procedure, that the Court issue a certificate that there is no just reason for delay in seeking an appellate review of its order of October 25, 1956, granting motion of Nuodex Products Co., Inc. to dismiss the cross-claim of E. & F. King & Co., Incorporated, against Nuodex

Products Co., Inc., on the ground that Nuodex Products Co., Inc. is not now and never has been subject to the jurisdiction of this District Court in the proceeding in which said cross claim was filed; and that the Court expressly direct that judgment be entered on that order to permit said defendant E. & F. King & Co., Incorporated, to perfect said appeal without delay.

E. & F. King & Co., Incorporated

ORDER

In accordance with the motion of the defendant E. & F. King & Co., Incorporated, under Rule 54 (b) I determine that after entry of judgment on the order of this Court of October 25, 1956 there was no just cause for delay in seeking a review of the issues raised by that order and I expressly direct that judgment be entered on that order to permit the defendant E. & F. King & Co., Incorporated to perfect such appeal without delay.

Aloysius J. Connor
United States Judge

October 31, 1956.

NOTICE OF APPEAL

Notice is hereby given that E. & F. King & Co., Incorporated, defendant above named, hereby appeals to the United States Court of Appeals for the First Circuit from:

The order of the District Court entered April 18, 1956 whereby the return of service of the complaint upon the defendant Nuodex Products Co., Inc. was quashed and said complaint was dismissed, on which order final judgment has been entered on October 25, 1956, pursuant to the provisions of Rule 54 (b) of the Federal Rules of Civil Procedure.

The order of the District Court entered May 31, 1956 denying the motion filed by the defendant E. & F. King & Co., Incorporated, on April 26, 1956 to amend and supplement the findings of fact of the said District Court;

The order of the District Court entered October 25, 1956, whereby the cross claim of E. & F. King & Co., Incorporated, against Nuodex Products Co., Inc., was dismissed on the ground that Nuodex Products Co., Inc. is not now, and never

has been subject to the jurisdiction of this District Court upon which order final judgment has been entered on October 31, 1956 pursuant to the provisions of Rule 54 (b) of the Federal Rules of Civil Procedure.

The points on appeal are those already filed in the First Circuit Court of Appeals, Docket No. 5136, E. & F. King & Co., Incorporated, cross-claimant, Appellant, vs. Nuodex Products Co., Inc., cross-defendant, Appellee, which are hereby referred to and are made a part hereof and apply to all orders and judgments designated by this appeal; the record to be printed and the brief to be filed on this appeal are those already filed in the aforesaid appeal, Docket No. 5136.